

IX. The Tribunal accordingly rules that the Applicant should be granted an indemnity as prescribed in Annex III (b) to the Staff Regulations, that is to say thirty working days' indemnity pay, and so orders.

(Signatures):

R. VENKATARAMAN
President

Suzanne BASTID
Vice President
Geneva, 23 April 1974

Roger STEVENS
Member
Jean HARDY
Executive Secretary

Judgement No. 184

(Original: French)

Case No. 180:
Mila

Against: The Secretary-General
of the United Nations

Termination of the employment of a staff member holding a permanent appointment on the ground of unsatisfactory service.

Witnesses heard by the Tribunal.

Issues on which the Applicant and the Respondent are in fundamental disagreement.

Previous judgements of the Tribunal relating to the termination of a permanent appointment on the occasion of the five-year review.

Consideration of the Applicant's performance of his duties and of the relations of the group of cleaners-movers with their supervisors.

Scrutinization of the procedures followed in connexion with the termination of the Applicant's appointment.—Rejection of certain allegations by the Applicant concerning procedural irregularities.—Finding by the Tribunal that there were three serious irregularities in the procedures followed in connexion with the termination of the Applicant's appointment.—Irregularity relating to the nature of the warnings given to the Applicant as to his performance and conduct.—Respondent's failure to give the Applicant written warning of the possible consequences of his behaviour or to record in his file the oral warnings he claims to have given him.—Irregularity relating to the Respondent's failure to observe the terms of circular ST/AI/115.—The Head of the Department did not make an investigation following the Applicant's rebuttal of his periodic report.—A belated "note for file" is insufficient to repair this deficiency.—Irregularity relating to the failure of the Appointment and Promotion Panel to hear a more representative body of witnesses and to probe in greater depth the deterioration in the relations between the team of cleaners and their supervisors.—Failure of the Panel to make a sufficiently thorough review of the Applicant's standards of efficiency, competence and integrity.—Conclusion of the Tribunal that the procedure followed prior to the decision to terminate the Applicant's appointment was improper.—Case remanded for correction of the procedure.—Award to the Applicant of compensation equivalent to three months' net base salary for the loss caused by the procedural delay.

Award to the Applicant of \$800 as costs.

Applicant's subsidiary application in respect of the permanent partial disability he claims to have suffered as a result of a service-incurred accident.—Application not receivable.

Applicant's incidental pleas requesting the Tribunal to set aside the documents submitted by the Respondent following the oral proceedings.—Pleas rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Francisco A. Forteza; Sir Roger Stevens;

Whereas, on 8 January 1974, Giovanni Mila, a former staff member of the United Nations, filed with the Tribunal an application the pleas of which read:

"A. Concerning the principal application

"1. For the reasons given in his explanatory statement, the Applicant requests the President of the Administrative Tribunal to order oral proceedings with a view to conducting an inquiry to establish, *inter alia*:

"(a) That contrary to the allegations of the Applicant's immediate superiors, that is, Mr. R. FOURNIER, Team Leader, and Mr. G. CHAMOT, Chief of the Internal Services Section, the Applicant's relations with his colleagues have always been excellent;

"(b) That on 9 June 1971 Mr. R. FOURNIER publicly insulted the Applicant by calling him a 'slacker', a 'blockhead' and a 'dirty Wop';

"(c) That the conduct of the Applicant did not change either before or after September 1970;

"(d) That the attitude of the Applicant's immediate superiors towards him has been marked by a spirit of animosity and prejudice since May-June 1971, when he was unable to work for 52 days because of an accident which occurred during and as a result of the Applicant's activities in the service of the respondent Organization;

"(e) That Mr. R. FOURNIER, leader of the cleaners' team, consistently treated his subordinates, and in particular the Applicant, in an outrageously authoritarian, abrupt, insulting, humiliating and inhumane manner;

"(f) That, especially since the appointment of André CROCHER as Chief of the Custodial Unit, the atmosphere in the team of cleaners-movers could be described as a 'climate of terror'; that some of the Applicant's colleagues had requested transfers to other units or had resigned rather than serve under the orders of Mr. FOURNIER, Mr. CROCHER and Mr. CHAMOT.

"2. The Applicant also requests the President of the Tribunal to bring to the attention of the Respondent the imperative reasons for respecting in the present case the procedural time-limits (which the Respondent did not observe before the Joint Appeals Board), because the witnesses who will be called to appear all reside in Switzerland or neighbouring countries, which means it will be necessary to prepare the case in good time for consideration by the Tribunal at its 1974 spring session in Geneva.

"3. The Applicant, for the reasons given in his explanatory statement and those which will become apparent during the course of the inquiry, requests the Tribunal to order the rescinding of the decision contested, originally taken by the Respondent on 9 February 1973, which became final on 1 November 1973 and was notified to the Applicant on 9 November 1973, because the Respondent, in terminating the Applicant's appointment, based his actions on the conclusions reached by the Geneva Appointment and Promotion Panel, which were in turn based on incomplete and erroneous information. The information was incomplete in that the Panel heard only witnesses for the prosecution and no witnesses for the defence; it was erroneous in that the information provided by the Applicant's immediate superiors was biased by prejudice and considerations irrelevant to the Applicant's performance and conduct. Consequently, the Tribunal is re-

quested to order the reinstatement of the Applicant in his former post, and if the Respondent fails to carry out such reintegration, to order the Respondent to pay the Applicant his full remuneration from the date of the expiry of his notice of termination, i.e. 16 November 1972, until the date on which the Tribunal pronounces its judgement, and to pay the Applicant for the injury sustained as a result of his unjustified termination compensation equivalent to three years' net base salary in view of the exceptional and highly prejudicial nature of the termination of the Applicant's appointment, described fully in his explanatory statement. The Tribunal is also requested to order the Respondent to pay moratory interest at a rate of 6.5 per cent on the aforementioned amounts from the dates on which they fall due; to condemn the Respondent to pay 45,000 Belgian francs or the equivalent in United States dollars at the exchange rate prevailing on the date of payment for fees, costs and expenses incurred by the Applicant in connexion with the present case.

"B. Concerning the subsidiary application

"The Applicant requests the Tribunal to decide that, since the Joint Appeals Board took no action on the request submitted by the Applicant for compensation for the permanent partial disability caused by an occupational accident he incurred in the service of the respondent Organization, the Tribunal should, if it finds that the procedure prescribed in the Staff Rules has not been observed, invite the Respondent, prior to the determination of the merits, to request the Tribunal that the latter should order the case remanded for institution or correction of the required procedure";

Whereas the Respondent filed his answer on 1 February 1974;

Whereas the Applicant filed written observations on 8 March 1974;

Whereas, on 8 March and 9 April 1974, the Applicant submitted additional explanations at the request of the Tribunal;

Whereas, on 14 March 1974, the Respondent submitted additional information at the request of the Tribunal;

Whereas the Applicant submitted additional documents on 25 March 1974;

Whereas, on 5 April 1974, Mr. E. Schelling, former Chief of Internal Services, addressed to the Tribunal a letter concerning the periodic reports he had prepared concerning the Applicant;

Whereas, on 9 April 1974, the Tribunal held a public hearing at which it heard the parties as well as witnesses called by the Applicant and by the Tribunal;

Whereas at the public hearing Mr. G. Chamot, Chief of the General Operations Branch, mentioned additional documents which he submitted on 11 April 1974;

Whereas, on 10 and 11 April 1974, the Applicant submitted incidental pleas concerning those documents;

Whereas, on 11 April 1974, the Tribunal informed the parties, in accordance with article 18 of its Rules, that it considered it possible, pursuant to article 9, paragraph 2, of its Statute, to remand the case in order that the required procedure might be instituted or corrected;

Whereas, on 16 April 1974, the Respondent requested that the case be remanded pursuant to article 9, paragraph 2, of the Statute of the Tribunal;

Whereas, on 21 April 1974, the Applicant reiterated his incidental pleas and submitted his views on the effects of the remand procedure;

Whereas the facts in the case are as follows:

The Applicant worked for the United Nations Office at Geneva under temporary

contracts as an usher from 23 March to 15 June 1964 and as a cleaner-mover from 25 January to 31 March 1965. On 1 April 1965 he received a probationary contract as a cleaner-mover, which was converted into a permanent appointment on 1 January 1967. From 1 April 1965 to 31 March 1970 three periodic reports were prepared concerning the Applicant's performance. In the first two reports, covering the periods 1 April 1965–31 March 1966 and 1 April 1966–31 March 1968 respectively, the Applicant was rated as "a staff member who maintains a good standard of efficiency"; in the third report, covering the period 1 April 1968–31 March 1970, he was described as "an efficient staff member giving satisfaction". In memoranda dated 10 and 11 January 1972 respectively, addressed to Mr. G. Chamot, then Acting Chief of the Internal Services Section, Mr. R. Fournier, Chief of the Team of Cleaners-Movers and Mr. A. Crocher, Chief of the Custodial Unit, complained about the Applicant's conduct and the quality of his work. The Chief of the Custodial Unit concluded his memorandum by requesting that sanctions be taken against the Applicant "for his negligence and notorious insolence". On 19 January 1972, the Acting Chief of the Internal Services Section prepared, for the purposes of the five-year review of the Applicant's permanent appointment, a report in which he stated that since September 1970 the Applicant, who until that time had normally given satisfaction, had been rated as a staff member who maintained only a minimum standard and in which he recommended that the Applicant's contract be terminated within the statutory period applicable to his case. The same day, Mr. R. Bernard, Chief of Purchase, Transportation and Internal Services, endorsed that recommendation and transmitted the report to Mrs. Cerna-Raton, Chief of the Personnel Administration Section. On 20 January 1972, in a fourth periodic report covering the period 1 April 1970–15 January 1972, the Applicant was rated as a "staff member who currently maintains only a minimum standard". On 2 February 1972, the Chief of Purchase, Transportation and Internal Services recommended that the Applicant should not be granted the annual salary increase which he would normally have received as of 1 January 1972; that recommendation was accepted. On 7 February 1972, the Applicant, who had refused to sign his fourth periodic report, explained the reasons for his refusal in a letter addressed to the Acting Chief of the Internal Services Section. In that letter, which was transmitted to the Chief of the Personnel Administration Section on 15 February 1972 with a covering letter from the Chief of Purchase, Transportation and Internal Services, the Applicant stressed that practically all his ratings had been suddenly lowered by his supervisor and he therefore concluded that the report was not objective. Since the report stated that he had "difficulties in dealing with people", whereas the preceding periodic reports had stated that he maintained "outstandingly good relations all round", the Applicant on 17 February 1972 sent to the Acting Chief of the Internal Services Section, as an annex to his letter of 7 February 1972, a statement in which 18 of the Applicant's colleagues attested that his relations with them had always been good. On 4 May 1972, the Chief of the Personnel Administration Section informed the Applicant that the General Services Division proposed to terminate his contract, that the Personnel Division supported that proposal and that a recommendation to that effect would be submitted to the Appointment and Promotion Panel in accordance with Staff Rules 104.13 (c) (iii) and 104.14 (f) (ii) (B). In letters addressed to the Chief of the Personnel Administration Section on 10 and 12 May 1972, the Applicant protested against the measure which was to be taken against him. The Appointment and Promotion Panel examined the Applicant's case at meetings held on 25, 26 and 29 May and 14 July 1972. The Panel heard the Applicant and several witnesses, including the Applicant's supervisors and a staff member designated by him, and concluded regretfully that it had no alternative but to recommend that the Applicant should be separated from service. On 10 August 1972, the Chief of the Personnel Division sent the Applicant the following notice of termination:

“ . . .

“I wish to inform you that the Panel, after thorough consideration, has endorsed the recommendation submitted jointly by the General Services Division and the Personnel Division, and has submitted its report to the Director-General of the United Nations Office at Geneva. After studying very carefully all the information in your file, the Director-General has decided to terminate your appointment in accordance with chapter IX, regulation 9.1 (a), of the Staff Regulations.

“This letter constitutes the notice of termination prescribed in Staff Rule 109.3 (a), the said notice to take effect on 16 August 1972.

“In the case of the termination of a staff member holding a permanent appointment, the notice period is three months, so that the effective date of your termination, if you were not separated from service until the end of the notice period, would be 16 November 1972. However, in lieu of the notice period it has been decided to pay you the compensation provided for in Staff Rule 109.3 (c), so that the date of your termination will be the same as the date of notice, namely 16 August 1972.

“You will also receive the termination indemnity provided for in paragraph (a) of annex III to the Staff Regulations.

“ . . . ”

On 6 and 12 September 1972, the Applicant wrote to the Secretary-General requesting that the decision to terminate his appointment be reviewed. On 24 October 1972, having received no reply from the Secretary-General, the Applicant appealed to the Joint Appeals Board. On 18 January 1973, Mr. T. B. Kirkbride, Director, Administrative and Financial Services, placed in the Applicant's file a note, prepared at the request of the Office of Personnel Services at Headquarters in accordance with administrative instruction ST/AI/115 concerning periodic reports, in which he concluded that the Applicant's fourth periodic report was fair and reflected an accurate and objective appraisal of the Applicant's performance and conduct. On 9 February 1973, the Secretary-General confirmed the termination decision in a letter to the Applicant in which he referred to the Applicant's periodic reports and the investigation conducted concerning the fourth report. On 21 August 1973, the Joint Appeals Board submitted its report to the Secretary-General. The conclusion and recommendation of the Board read as follows:

“VIII. Conclusion of the Board

“110. The Board recognizes that the decision of the Secretary-General not to renew the permanent appointment of the appellant was not inconsistent with the Staff Regulations and Rules.

“111. The Board, however, is of the opinion that the way in which the Administration handled this case was not in accordance with reasonable administrative practice in a situation involving vital interest of the appellant. These administrative shortcomings do, in the opinion of the Board, justify the granting of an appropriate financial compensation.

“Recommendation

“112. Taking into consideration the above findings and conclusions, the Board recommends to the Secretary-General that the appellant be granted an appropriate indemnity which in the opinion of the Board should be the equivalent of four months' salary at the grade and the step of the appellant at the moment of separation.

“The member elected by the staff was of the opinion that, given the adminis-

trative shortcomings, the appropriate financial compensation should be the equivalent of twelve months' salary at the grade and the step of the appellant at the moment of separation."

On 1 November 1973, the Assistant Secretary-General, Personnel Services, communicated the Secretary-General's final decisions to the Applicant in the following terms:

"... The Secretary-General has reconsidered your complaints in the light of the report of the Board and has decided to maintain the decision to terminate your appointment, against which you appealed.

"The Secretary-General has also decided to reject the recommendation of the Board concerning the payment of compensation for having made your termination immediately applicable instead of observing the normal notice period. In taking the latter decision the Secretary-General has taken into consideration the Board's conclusion that your claim that the decision was motivated by prejudice was unfounded and that the decision had been properly taken.

"The question of observing the notice period or replacing it by monetary compensation falls entirely within the Secretary-General's discretion. In the absence of any improper motivation, the exercise by the Secretary-General of his discretionary power can in no case be contested.

"The Secretary-General has also taken into consideration the fact that the substitution of monetary compensation for the notice of termination has in fact caused you no real injury because you have received all your remuneration for the notice period. As to the moral aspect mentioned by the Board, the Secretary-General is not convinced that the effective date of termination was of any importance in a situation involving due and proper termination."

On 8 January 1974 the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The contested periodic report is so tainted with improbabilities and contradictions that it appears to be devoid of any real and objective foundation; moreover, the explanations given by the Respondent in an attempt to resolve those contradictions are themselves vitiated by errors of fact and interpretation.

2. The administrative procedure which resulted in the termination of the Applicant's appointment was observed in the letter but not in spirit, for the rights of the defence were violated in several respects, in particular by the Panel and to a lesser degree by the Joint Appeals Board.

3. These procedural omissions and irregularities constitute essential defects which led the competent authorities to make erroneous evaluations and to adopt decisions which were vitiated because they were based on incomplete information, clearly influenced by prejudice and by factors irrelevant to the Applicant's performance and conduct.

4. In particular, the contested decision took into account only a small part of the Applicant's services and was not preceded by a warning; there was no investigation as required in administrative instruction ST/AI/115 and the favourable periodic reports of the Applicant were retroactively re-evaluated.

Whereas the Respondent's principal contentions are:

1. The termination decision was a proper exercise of the Secretary-General's authority under Staff Regulation 9.1 (a) and did not constitute an abuse of power. The Applicant has been unable to establish any basis for a finding of prejudice or improper motivation.

2. The Applicant's right to review by the Appointment and Promotion Board was

observed. The recommendation of the Board was not based on erroneous or prejudiced information. It was based on a fair consideration of the Applicant's case. The Panel went far beyond the minimum requirements of fair and reasonable procedure in considering the Applicant's case; its proceedings and report preclude any finding of procedural defect or error of a nature such as to vitiate the termination decision.

3. The Joint Appeals Board procedure conformed with Staff Regulation 11.1 and Staff Rule 111.3. The Board dealt with the case in exceptional depth and there was no irregularity invalidating its proceedings.

The Tribunal, having deliberated from 8 to 24 April 1974, now pronounces the following judgement:

I. The Tribunal considered, on the one hand, the Applicant's request that it order oral proceedings to examine the circumstances leading up to the termination of the Applicant's appointment and, on the other hand, the view of the Respondent that, since the termination decision was a proper exercise of the Secretary-General's discretionary authority after a fair review by the Appointment and Promotion Board, the Tribunal need not itself examine witnesses or order inquiries. Having concluded that it would be appropriate that it should hear witnesses, the Tribunal, at the public hearing held on 9 April 1974, heard the following witnesses, together with counsel for the Applicant and the Respondent:

At the request of the Applicant:

Mr. Blaise Franquina, former cleaner, currently a member of the technical services

Mr. Aldo Pelizzo, cleaner, temporarily employed as an usher

Mr. Roger Geiser, former cleaner, currently an usher

Mr. Pierre Bron, former cleaner, retired

Mr. Léonard Berset, cleaner-mover

Mr. Jean Grevaz, former cleaner

Mr. Hubert Gay, former cleaner, retired

At the request of the Tribunal:

Mr. René Pointe, Chief, General Services Division

Mr. Georges Chamot, Chief, General Operations Branch

The Tribunal's request to hear Mr. Bernard, Head of the Purchase, Transportation and General Operations Branch, Mr. Crocher, Chief of the Custodial Unit and Mr. Fournier, Team Leader, could not be met, as the first two were away on leave and the last was in hospital. The Applicant had also proposed to call Mr. E. Schelling, whom Mr. Chamot had succeeded in September 1970, and Mrs. Assunta Forotti, but the former preferred to send a letter rather than make a personal appearance and the second was unable to make the journey from Rome for health reasons.

II. In its examination of both the written evidence and the witnesses called, the Tribunal noted that there were two main issues on which the Applicant and the Respondent were in fundamental disagreement. The first concerns the Applicant's performance of his duties up to the time of his separation from service, and the nature of the personal relationships existing within the group of cleaners-movers at the United Nations Office at Geneva and between that group and their supervisors. The second relates to the procedures followed in connexion with the termination of the Applicant's appointment, including the extent to which they conformed to the requirements of circular ST/AI/115 of 11 April 1956, and the nature and extent of the inquiry undertaken by the Appointment and Promotion Panel in its five-year review of the Applicant's permanent contract.

III. The Tribunal has stated in several cases (Judgements No. 98, *Gillman*, No.

131, *Restrepo* and No. 157, *Nelson*), that in view of the "rights given by the General Assembly to those individuals who hold permanent appointments in the United Nations Secretariat . . . such permanent appointments can be terminated only upon a decision which has been reached by means of a complete, fair and reasonable procedure which must be carried out prior to such decision".

The Tribunal has also acknowledged that when the Appointment and Promotion Board reviews a permanent appointment at the end of a five-year period, the review carried out by the Board or its subsidiary bodies, represents, in principle, "the complete, fair and reasonable procedure which must be carried out prior to the termination of a permanent appointment".

However, the Tribunal has considered that the termination decision may be invalid if taken on the basis of recommendations by the Panel reached in the light of inadequate or erroneous information (Judgement No. 98, *Gillman*). The Tribunal has also stated that in order to be proper, the procedure followed must permit adequate consideration by the Panel of the unfavourable judgements formulated "concerning the Applicant's work", and that the examination of the case must be "reasonably detailed" (Judgement No. 131, *Restrepo*).

In order to determine whether the termination decision was taken on the basis of a recommendation formulated by the Panel in accordance with the aforementioned requirements, the Tribunal deemed it necessary to carry out a prior over-all examination of the situation on the basis of the file, statements by the parties and statements by witnesses.

IV. As regards the Applicant's performance of his duties, the Tribunal noted that, according to the periodic reports prepared in March 1966, 1968 and 1970, the Applicant's work had been satisfactory, but that in January 1972, when the five-year review of his contract was to be carried out, the Applicant was given a highly unfavourable report which in section II described him as "a staff member who currently maintains only a minimum standard" and that that report had been prepared at the time when the review of his contract was to take place. The 1972 report gave the Applicant the lowest possible ratings for technical competence, industry, quality of work accomplished, judgement, reliability, initiative and personal relations with others. On the last point, the printed form reads "tends to have difficulties in dealing with people"; this had been amended to read "has difficulties in dealing with people". Only on punctuality did the Applicant fail to receive the lowest rating, although the quantity of work he accomplished was described as "very moderate", the word "insufficient" having been deleted. The contrast between this report and the earlier reports could scarcely have been more stark. According to the Respondent, the quality of work accomplished by the Applicant deteriorated continually after September 1970 and he had been warned about that on numerous occasions. According to Mr. Fournier, the Team Leader, the Applicant resented criticism, failed to take proper precautions when moving furniture, and was often ill-mannered with his colleagues, some of whom objected to working in the same team as him. According to Mr. Crocher, Chief of the Custodial Unit, the bad behaviour of some cleaners-movers had been noted by many officials in other departments at the Palais des Nations. That behaviour had caused an uneasy atmosphere and on that account Mr. Crocher had requested that sanctions be taken against the Applicant. Mr. Chamot, Chief of the General Operations Branch, told the Tribunal that some people had telephoned him directly in 1971, stating that he should not send the Applicant to work for them. According to Mr. Chamot, such requests were made by the Conference Division and other services.

V. The Tribunal noted that the Applicant, on the other hand, maintained that no change had occurred in the quality of his work except in so far as his industry was affected by an accident which occurred at work in April 1971, as a result of which he

had to be hospitalized for a hernia operation and was absent from duty between 10 June and 8 August 1971; the Applicant also affirmed that his relations with the other members of the team of cleaners-movers were excellent throughout and that any incidents that occurred were provoked by the way in which Mr. Fournier and Mr. Crocher exercised their authority. The witnesses produced by the Applicant also testified to having good relations with him and gave no evidence to suggest that in their view the quality of his work had deteriorated during the period in which the Respondent alleges that such deterioration occurred. None of the testimony produced supported the allegation of Mr. Fournier that some of the Applicant's colleagues objected to working in the same team as him.

VI. As to the relations of the group of cleaners-movers with their supervisors, the Tribunal noted that Mr. Fournier had been in charge of the cleaners' team throughout the period of the Applicant's employment, and that it was he who had put the initial signature on the first and favourable periodic report (April 1966). The Tribunal also noted the view, given orally by Mr. Chamot, that he had known Mr. Fournier for 20 years, had often worked with him, and did not think that Mr. Fournier had a particular animosity against the Applicant. The Tribunal's attention was drawn, on the other hand, to the Applicant's allegations that Mr. Fournier consistently treated his subordinates "and in particular the Applicant, in an outrageously authoritarian, abrupt, insulting, humiliating and inhumane manner" and that "especially since the appointment of . . . Mr. Crocher . . .", the atmosphere in the team of cleaners-movers could be described as a "climate of terror"; that as a result some of the Applicant's colleagues had requested transfers to other units or had resigned rather than continue to work in the team. The witnesses called by the Applicant stated that there had been a serious deterioration in the attitude of the supervisors towards the team after the appointment of Mr. Crocher in June 1968, that thereafter the team was badly led and that its members were treated with great lack of consideration both at work and in the event of illness. Some witnesses recounted incidents to illustrate the rough treatment accorded to members of the team in general and to the Applicant in particular. Some of them confirmed that they had arranged to be transferred or had left the service on account of the disagreeable atmosphere in which they had to work. However, those who were still members of the team in 1972 all testified that their own periodic reports had not been adversely affected at the time when that of the Applicant had shown so marked a change.

VII. In brief, the Tribunal is convinced that there was a serious and progressive deterioration in relations between the team of cleaners and their immediate supervisors during at least two years prior to January 1972. This deterioration appears to have occurred in successive stages, beginning with the appointment of Mr. Crocher to replace Mr. Gay in June 1968. Although Mr. Fournier had previously been in charge of the team, it would appear that it was only after the appointment of Mr. Crocher that Mr. Fournier's attitude towards his subordinates changed. It was only after the appointment of Mr. Chamot to replace Mr. Schelling in September 1970 that the attitude of Mr. Crocher and Mr. Fournier appeared to become one of confrontation with regard to certain members of the team who were suspected of being ringleaders or troublemakers. On the basis of the available evidence, the Tribunal draws the tentative conclusion that the Applicant was so identified. However, the Tribunal is unable to judge whether the deterioration in discipline justified a confrontation and, if so, whether the Applicant could be considered a ringleader or troublemaker. However good his relations with his equals, it is evident that the Applicant's relations with his supervisors worsened markedly after 1969; it is less easy to determine whether the provocation was weighted more heavily on the Applicant's side or on that of his supervisors. The Tribunal, however, has the impression that Mr. Crocher's

superiors were either unaware of the very serious atmosphere prevailing in relations between the cleaners' team and their immediate supervisors or, if they were aware of it, chose to regard it as solely attributable to insubordination and lack of co-operation on the part of some members of the team, which was in turn reflected in the alleged deterioration of the Applicant's performance. This said, the Tribunal recognizes, as it did in the *Peynado* case (Judgement No. 138), that "it cannot substitute its judgement for that of the Secretary-General concerning the standard of performance or efficiency of the staff member involved".

VIII. The sentence quoted above from Judgement No. 138 is followed by another which is relevant to the present case, reading "However, where the [Appointment and Promotion] Board reached its conclusions in the light of inadequate or erroneous information and the Secretary-General relied on these conclusions for the termination of the appointment, the fact that there was a review by the Board does not secure that the Secretary-General's decision is valid."

IX. The Tribunal has carefully scrutinized the procedures followed prior to the recommendation of 19 January 1972 that the Applicant's appointment be terminated, up to the time of the final decision taken by the Secretary-General on 9 February 1973. First, there are some procedural irregularities alleged by the Applicant which the Tribunal does not accept as such. Thus the Tribunal notes that the text of the report of Mr. Chamot dated 19 January 1972 was incorporated in the letter sent to the Applicant by Mrs. Cerna-Raton on 4 May 1972; the Tribunal therefore rejects the Applicant's contention that the letter "has only just been brought to the knowledge of the Applicant's counsel by the Respondent during the proceedings". Again, the Tribunal considers that the Respondent was not required under the Staff Rules nor by administrative practice to provide the Applicant with copies of the confidential reports of 10 and 11 January 1972 prepared by Mr. Fournier and Mr. Crocher respectively at a time when these were no more than departmental memoranda. Finally, the Tribunal rejects the Applicant's contention that an irregularity occurred or that circular ST/AI/115 was transgressed because the Applicant's letters of protest dated 7 and 17 February were not mentioned in the letter of 4 May from the Personnel Administration Service. The Tribunal notes that the Applicant's letter of 7 February was sent to the Personnel Administration Section under cover of a letter of 15 February from Mr. Bernard; that the Applicant's letter of 12 May to the Personnel Administration Section enclosed photocopies of his letters of 7 and 17 February; and that the Appointment and Promotion Panel saw the Applicant's file, which contained the letters in question.

X. The Tribunal considers nevertheless that there were three serious irregularities in the procedures followed in connexion with the termination of the Applicant's appointment. These relate, firstly, to the nature of the warnings as to his performance and conduct given to the Applicant before January 1972; secondly, to the failure to observe the terms of circular ST/AI/115, which require that where a staff member makes a written statement in explanation or rebuttal of a periodic report the Head of Department or Service should investigate the case and record his appraisal of it in writing, this report to be filed together with the periodic report and the staff member's statement; thirdly, to the failure of the Appointment and Promotion Panel to hear a more representative body of witnesses and more generally to probe in greater depth the deterioration in the relations between the team of cleaners and their supervisors.

XI. The Tribunal observes that the timing and nature of the warnings regarding the Applicant's performance and conduct have not been entirely clarified. It notes first of all that the Respondent made a number of references to deterioration in the quality of the Applicant's work after September 1970; it also recalls that the third periodic report on the Applicant's work, made in March 1970, was favourable and described him as "an efficient staff member giving satisfaction". These facts would seem to

indicate that any warnings regarding his performance and conduct were given subsequent to September, or at least to March 1970. However, the Appointment and Promotion Panel stated in its report that "departmental records indicated that Mr. Mila had received at least seven verbal warnings since the beginning of 1969", and Mr. Kirkbride, in his "note for file" of 18 January 1973, to which fuller reference is made in paragraph XII below, quotes Mr. Chamot as saying that "it was unfortunate that Mr. Schelling" (who, it will be recalled, retired in September 1970) "had not recorded in previous periodic reports the unsatisfactory performance of Mr. Mila as this might have been more effective than the oral warnings". The Tribunal has not been able to identify in the "departmental records" the seven verbal warnings to which the Panel referred. But, following his oral testimony, and at the request of the Tribunal, Mr. Chamot produced a document with enclosures which had been sent by Mr. Crocher to Mr. Bernard on 3 February 1969, reporting certain incidents which occurred between 28 and 31 January 1969 and about which the Applicant was apparently warned by Mr. Crocher himself at the time. The Applicant was allegedly shown some brief written reports which he did not contest but refused to sign. Certain notebooks on members of his staff maintained by Mr. Fournier during the early months of 1969 and 1972 were also produced at the Tribunal's request by Mr. Chamot, who informed the Tribunal that he had not found a similar notebook for 1970 and 1971. The notebooks mention various incidents in which the Applicant was involved and to which his attention was apparently drawn in some cases. The Tribunal has also noted that the Applicant did not at any time challenge the reference in the periodic report dated 20 January 1972 to the "frequent verbal observations made to the staff member concerning the poor quality of his work". The Tribunal observes, however, not only that the Applicant did not receive any written warning but also that there is no record in his personal file of any verbal warning. Moreover, there is no evidence that any of the verbal warnings contained any hint or threat of possible disciplinary or other action which might be taken if the staff member's work did not improve or of the possible consequences at the time of the five-year review of his contract. The Tribunal also observes that the recommendation to terminate the Applicant's contract preceded rather than followed the adverse periodic report: Mr. Chamot's letter containing the recommendation in question is dated 19 January 1972 and his signature on the report 20 January 1972. The Tribunal considers that the Respondent should have given the Applicant due and formal warning of the possible consequences of his behaviour and recorded in his file the warnings which he claims to have given him. It is particularly unfortunate that the favourable report of March 1970 contains no reflection of the verbal warnings allegedly given to the Applicant prior to that date. This omission was liable to have—and there is some evidence to suggest that it did have—three unhappy consequences: it encouraged the Applicant to believe that he might continue to receive favourable reports despite the warnings he had already been given; it thereby diminished the effect of those warnings; and it may have misled the staff member as to the true situation until after 19 January 1972, the date on which his termination was actually recommended.

XII. The Tribunal notes that the second procedural irregularity, namely the fact that, contrary to circular ST/AI/115, the Head of the Department did not make an investigation, record his appraisal of it in writing and place his report on file, has been admitted by the Respondent. The latter has, however, expressed reservations on this matter which the Tribunal considers unacceptable. In the Tribunal's view Mr. Bernard's letter of 15 February 1972 in no way meets the requirements of the above-mentioned circular. The Respondent does not claim that Mr. Bernard made an investigation and, in the Tribunal's view, it is clear that he did not do so. Moreover, the letter of 15 February was written before the Applicant's second letter, dated 17 February, which enclosed a letter signed by 18 of his colleagues. There is no evidence that the

Respondent took action on this last letter, the purpose of which was to refute the accusation made against the Applicant in his periodic report that he had "difficulties in dealing with people". In the Tribunal's view, the Respondent's failure to comply with the terms of circular ST/AI/115 was the more serious in that the Appointment and Promotion Panel had to consider the proposal to terminate the Applicant's services without the benefit of a proper investigation and appraisal of the situation by the Head of the Department; the periodic report as it was sent to the Panel was thus an incomplete document, as in the *Peynado* case (Judgement No. 138).

Nor does the Tribunal accept the Respondent's thesis that the requirements of the circular were met by the appraisal submitted by Mr. Kirkbride on 18 January 1973, or about a year later, at the request of Headquarters. In the Tribunal's view, Mr. Kirkbride's "note for file" is a belated effort to repair a deficiency and has little value or significance. Its author admits to having written it unwillingly; it contains a major inaccuracy about the date of the Applicant's hospitalization; it contains no evidence of there having been a thorough investigation; finally, and most important of all from the procedural standpoint, it was not available for consideration by the Appointment and Promotion Panel and therefore failed to serve the purpose for which the investigation and appraisal called for in circular ST/AI/115 are intended. The Tribunal concludes that the Respondent's failure to comply with circular ST/AI/115 constitutes a grave procedural irregularity which is liable to have affected the Panel's opinion of the Applicant.

XIII. The Tribunal recognizes that the Panel had a difficult task and that, for the reasons given in the preceding paragraph, the documentation before it was inadequate. Whatever the reason therefor, it seems to have given priority in its oral hearings to evidence from the Applicant's supervisors. Nor does it seem to have investigated fully the matter of the verbal warnings recorded in departmental records and mentioned in paragraph XI above, or to have identified those of the Applicant's colleagues who, according to Mr. Fournier's report of 10 January 1972, had objected to working in the same team as him. Perhaps because of the choice of witnesses who appeared before it, the Panel was unable, as the Joint Appeals Board pointed out, "to make a fuller appreciation of the unsatisfactory atmosphere prevailing in the unit and of the problems existing in the relationship between several members of the unit and their supervisors". Furthermore, one member of the Panel thought there was not enough official documentation to justify the termination of the Applicant at that time, and it seems that the other members did not base their decision primarily on the quality of the Applicant's work, but on the fact that they had no choice between retention and separation and that retention would "create a problem with regard to morale, discipline and authority within the unit".

The Tribunal considers that, given the difficult circumstances of the case, the Panel did not make a sufficiently thorough, searching and balanced review of the Applicant's standards of efficiency, competence and integrity. That being so, the decision to terminate the Applicant's appointment reached on the recommendation of the Panel was not preceded by a procedure meeting the requirements referred to in paragraph III above.

XIV. The Tribunal none the less points out that the Panel's efforts exceeded those of the Respondent. In its view, there is ample evidence that Mr. Crocher's superiors were ill-informed as to the true feelings of the team of cleaners, that they accepted everything the supervisors told them, overlooking the fact that the supervisors themselves were the subject of controversy, that they failed to make a proper investigation of the charges against the Applicant by personal inquiry, that they dismissed the enclosure in the Applicant's letter of 17 February 1972 on the pretext that it was, to use the words of Mr. Kirkbride, a petition which had been "solicited" and whose

“validity” was therefore “questionable” and to which importance should not be attached, and that they acted hastily on the occasion of the five-year review whereas the situation called for careful investigation.

XV. Without pronouncing on the merits of the case, the Tribunal decides that the procedure followed prior to the decision to terminate the Applicant's appointment was improper.

The Tribunal having decided to apply article 18 of its Rules, the Respondent has requested that the case be remanded for correction of the procedure. Accordingly, the Tribunal remands the case for correction of the procedure laid down in Staff Rule 104.14 (f) (ii) (B).

XVI. Under article 9, paragraph 2, of its Statute, the Tribunal may, if it decides to remand a case for correction of the required procedure, order the payment to the Applicant of compensation, not to exceed the equivalent of three months' net base salary. Without pronouncing on the merits of the case, the Tribunal grants the Applicant compensation equivalent to three months' net base salary for the loss caused by the procedural delay.

XVII. With regard to the Applicant's request in respect of fees, costs and expenses, the Tribunal, having studied the statements submitted by the Applicant, orders the Respondent to pay him the sum of \$800 as costs.

XVIII. With regard to the Applicant's subsidiary application in respect of the permanent partial disability he claims to have suffered as a result of a service-incurred accident, the Tribunal finds that the application is not receivable, the Applicant having failed to comply with the procedure prescribed in appendix D of the Staff Rules.

XIX. In incidental pleas, the Applicant has requested the Tribunal to set aside the documents submitted by the Respondent following the oral proceedings. The Tribunal notes that these documents were submitted at its request and following the hearing of a witness and that they were communicated to the Applicant. It is for the Tribunal to assess their probative value, but it rejects the incidental pleas as unfounded.

XX. Without pronouncing on the merits of the case, the Tribunal decides that:

(1) The case be remanded for correction of the procedure in accordance with article 9, paragraph 2, of the Statute of the Tribunal;

(2) The Applicant be paid compensation equivalent to three months' net base salary for the loss caused him by the procedural delay;

(3) The Applicant be paid \$800 as costs;

(4) All other requests are rejected.

(Signatures)

Suzanne BASTID
Vice-President, presiding

F. A. FORTEZA
Member

Geneva, 24 April 1974

Roger STEVENS
Member

Jean HARDY
Executive Secretary